

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4

NICK IRIZARRY-ROSADO,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil No. 14-1588 (JAF)

(Crim. No. 12-685-1)

5
6 **OPINION AND ORDER**

7 Petitioner Nick Irizarry-Rosado (“Irizarry-Rosado”) comes before the court with a
8 petition under 28 U.S.C. § 2255 to vacate, set aside, or correct the sentence we imposed
9 in Criminal No. 12-685-1. (Docket No. 1.) For the following reasons, we deny his
10 petition.

11 **I.**

12 **Background**

13 On September 24, 2012, Irizarry-Rosado was indicted along with numerous
14 codefendants. (Crim. No. 12-685-1, Docket No. 3.) On April 24, 2013, Irizarry-Rosado
15 pleaded guilty to conspiracy to import a controlled substance and laundering of monetary
16 instruments. (Crim. No. 12-685-1, Docket Nos. 196, 197, 328, 425.) On July 22, 2013,
17 we sentenced Irizarry-Rosado to two-hundred ten (210) months imprisonment, as well as
18 supervised release and a monetary assessment. (Crim. No. 12-685-1, Docket Nos. 327,
19 424, 328.) Irizarry-Rosado did not appeal. (*See* Crim. No. 12-685-1.) On July 31, 2014,
20 Irizarry-Rosado filed the instant motion to vacate his sentence under 28 U.S.C. § 2255.

1 (Docket No. 1.) On October 14, 2014, the United States filed a response in opposition to
2 his motion. (Docket No. 5.)

3 **II.**

4 **Jurisdiction**

5 Irizarry-Rosado is currently in federal custody, having been sentenced by this
6 district court. To file a timely motion, Irizarry-Rosado had one year from the date his
7 judgment became final. 28 U.S.C. § 2255(f). In the absence of an appeal, his judgment
8 became final fourteen days after the entry of judgment. Fed. R. App. 4(b)(1)(A)(i). This
9 allowed him until August 9, 2014, to file his motion, which he did.

10 **III.**

11 **Analysis**

12 Irizarry-Rosado does not provide any details for his claims. He states simply that
13 he had “ineffective assistance of counsel,” that “Petitioner never committed money
14 laundering” (sic), and that “Petitioner has no leadership role, but his sentence was
15 enhanced with it.” (Docket No. 1.)

16 Because Irizarry-Rosado appears pro se, we construe his pleadings more favorably
17 than we would those drafted by an attorney. *See Erickson v. Pardus*, 551 U.S. 89, 94
18 (2007). Nevertheless, Irizarry-Rosado’s pro-se status does not excuse him from
19 complying with procedural and substantive law. *See Dutil v. Murphy*, 550 F.3d 154, 158
20 (1st Cir. 2008). It is well-established that “issues that are adverted to in a perfunctory
21 manner absent developed argumentation are waived.” *United States v. Brown*, 669 F.3d
22 10, 16 n.5 (1st Cir. 2012). “It is not enough merely to mention a possible argument in the
23 most skeletal way, leaving the court to do counsel’s work, create the ossature for the

1 argument, and put flesh on its bones.” *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir.
2 1990) (internal citations omitted).

3 Although Irizarry-Rosado’s allegations are undeveloped and, therefore, deemed
4 waived, the last two would also fail due to his own admissions. As part of his plea
5 agreement, Irizarry-Rosado admitted certain facts. He admitted that he “transferred a
6 Western Union money order for the amount of \$1,200.00 USD from Puerto Rico to an
7 individual in the Dominican Republic as partial payment for narcotics previously
8 obtained,” thereby admitting to money laundering. (Crim. No. 12-685-1, Docket No. 197
9 at 17.) He also admitted that “[d]uring the time of the conspiracy the defendant acted as a
10 captain of a vessel in a drug smuggling venture in one or more occasions,” thereby
11 admitting to a leadership role. (Crim. No. 12-685-1, Docket No. 197 at 17.)

12 IV.

13 Certificate of Appealability

14
15 In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever
16 issuing a denial of § 2255 relief we must concurrently determine whether to issue a
17 certificate of appealability (“COA”). In this respect, we state that it has become common
18 practice to collaterally challenge federal convictions in federal court by raising arguments
19 of dubious merit. This practice is overburdening federal district courts to the point of
20 having some of these criminal cases re-litigated on § 2255 grounds. We look at this
21 matter with respect to the rights of litigants, but also must protect the integrity of the
22 system against meritless allegations. *See Davis v. U.S.*, 417 U.S. 333, 346 (1974) (in a
23 motion to vacate judgment under §2255, the claimed error of law must be a fundamental
24 defect which inherently results in a complete miscarriage of justice); *see also Dirring v.*
25 *U.S.*, 370 F.2d 862 (1st Cir. 1967) (§ 2255 is a remedy available when some basic

1 fundamental right is denied—not as vehicle for routine review for defendant who is
2 dissatisfied with his sentence).

3 We grant a COA only upon “a substantial showing of the denial of a constitutional
4 right.” 28 U.S.C. § 2253(c)(2). To make this showing, “[t]he petitioner must demonstrate
5 that reasonable jurists would find the district court's assessment of the constitutional
6 claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting
7 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). While Irizarry-Rosado has not yet
8 requested a COA, we see no way in which a reasonable jurist could find our assessment
9 of his constitutional claims debatable or wrong. Irizarry-Rosado may request a COA
10 directly from the First Circuit, pursuant to Rule of Appellate Procedure 22.

11 **V.**

12 **Conclusion**

13 For the foregoing reasons, we hereby **DENY** Irizarry-Rosado's § 2255 motion
14 (Docket No. 1). Pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings,
15 summary dismissal is in order because it plainly appears from the record that Irizarry-
16 Rosado is not entitled to § 2255 relief from this court.

17 **IT IS SO ORDERED.**

18 San Juan, Puerto Rico, this 30th day of October, 2014.

19 S/José Antonio Fusté
20 JOSE ANTONIO FUSTE
21 U. S. DISTRICT JUDGE